

Revised Sept. 7, 2012. .

CA HSRA Directors:

Your blended rail plan is **dangerous**.

- It locks in 43 grade crossings for pedestrians, cars, and trucks – an invitation to accidents and to the demented, and consequent delays.
- As trains whiz by, Caltrain passengers stand unprotected on station platforms inches away.

It's far too hazardous for trains at high speeds.

The plan is **costly**.

- Caltrain modifications.
- Subway tunneling in San Francisco.
- Terminal facilities (station, yard, shop, etc.) in a high rent district.
- Future trans-Bay train tube for extension to Sacramento???

Safer, and much less costly: Amtrak route (UP L/D Lines) north from Santa Clara (via Mulford) to a new West Oakland intermodal station where BART crosses over the UP/Amtrak line:

- None of the above high cost items;
- Simple Caltrain conversion to BART;
- A shorter, straighter, and safer route for Capitol Corridor;
- Enhanced SF/Peninsula rail access to Sacramento;
- BART every few minutes to 4 downtown SF stations and the West Bay;
- Frequent BART to many East Bay stations.

Upgrade (i.e., grade separate, multi-track, securely fence) the Mulford and East Bay rail lines for HSR as part of a 5-County BART plan.

### What about Caltrain?

The comprehensive 1957 SFBARTC "Report to the Legislature" called for unified regional rapid transit under one management (including to San Jose and around the Bay). Five years later, a super-majority of voters in three counties bonded themselves in 1962 for \$792 million to build a then-unproven BART system. (The bonds were paid off by 1999.)

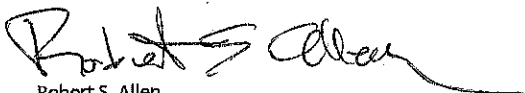
As requested by San Mateo and Santa Clara Counties, BART has extended to Millbrae, is under construction to Berryessa, and is ill-planned to downtown San Jose and the Santa Clara Caltrain station (by San Jose's Mineta International Airport).

It's time to update the 1957 Report: convert Caltrain (Millbrae to Santa Clara) to BART and abandon the rest. About 25 miles would be at grade beside the UP freight main with about 10 new overpasses, but about 5 miles (in Burlingame-San Mateo, Redwood City, and Atherton-Menlo Park) would likely be in a depressed cut bridged by city streets.

### 5-County BART

Let's develop a balanced 5-County plan to fund these Caltrain changes; the Mulford line upgrade; a new West Oakland BART-HSR intermodal station; and BART extensions: through San Jose, to the Golden Gate and Carquinez bridges, to Brentwood, and over the Altamont generally along the former SP rail line.

Let the voters decide on the plan and funding, as they did for the original BART fifty years ago. (Adjusted for inflation and the 5-County population, a bond issue equivalent to BART's in 1962 should yield about \$16 billion.) 5-County BART appears financially feasible. Linked to High Speed Rail, it would eliminate many of the congestion and environmental concerns we face today.



Robert S. Allen  
BART Director, District 5, 1974-1988  
Retired, SP (now UP RR) Western Division, Engineering/Operations  
Life Member, American Railway Engineering and Maintenance of Way Association (AREMA)

# APAC Associated Professionals and Contractors of CA, Inc.

CHSR Authority Board Meeting  
Tuesday, September 11, 2012  
10:00 a.m.

Greetings Chairman Richard and Authority Board Members.

This morning I'd like to comment on **Agenda Item #7, # 8 and other issues** previously brought to your attention.

**Item #7 HIGH SPEED RAIL ORGANIZATIONAL CONFLICT OF INTEREST:** There are 21 pages dealing with this Item, including charts showing hypothetical organizational conflicts of interest which are fairly good, however; the most serious and blatant issue to bring to your attention is on **Page 6, #2 Failure to Comply**, it reads as follows:

"If the Authority determines, **in its sole discretion**, that a Contractor has failed to comply with this Policy in any respect (including any failure to disclose an **actual, perceived or potential** Organizational Conflict of Interest), the Authority may, among other things, take the following actions: (it lists A. B. C. and D. Actions) Item D. states "if the Contractor **was or should have been aware of** and failed to disclose an Organization Conflict of Interest prior to award of the contract, (the Authority may) terminate such contract for default."

It continues "If the Authority cancels a contract as specified above, it will have **no obligation, responsibility or liability to reimburse all or part of the costs incurred or alleged to have been incurred by the Contractor**, its Affiliates or other team members. Additionally, **the Authority shall be entitled to recover any and all payments** made to the Contractor subsequent to the date when the Contractor became aware of or should have become aware of the existence of the Organizational Conflict of Interest."

It seems that this Organizational Conflict of Interest is 100% biased in favor of the High Speed Rail. The tone of "Failure to Comply" and the Authority's "Sole Discretion" is reflected throughout this document. Our members reviewing this agenda item could not locate one reference that contractors are entitled to an "Appeal Process". On the contrary, throughout the document it refers to the Authority's "Sole Discretion" which is a *Legal Term of Art* which simply defines that there is no appeal process. Example of this can be seen on page 7, bottom of the second paragraph which states "The Authority's decision on the matter shall be final and binding and **shall not be subject to appeal** " or on page 11, X Safeguards and Mitigation Efforts: first paragraph, 4<sup>th</sup> line reads, "then the Authority, **in its sole discretion**, may require the Contractor to implement suitable safeguards, including those described below, to mitigate any Organizational Conflict of Interest."

To our knowledge, Contractors are still entitled to due process in the State of California.

I recommend that this item be deferred to either the Authority Executive Board or the Business Council for its review and input.

**Item #8 – APPROVAL TO ISSUE REQUEST FOR QUALIFICATIONS FOR PROJECT AND CONSTRUCTION MANAGEMENT SERVICES FOR CONSTRUCTION PACKAGE 1**

Before the final RFQ is issued, APAC recommends the Authority state up front in the RFQ Document that this project has the 30% SBE Goal with 10% DBE and 3% DVBE Goals. APAC also requests that Authority Staff and Consultants consider the following recommendations to the CM RFQ:

**Page 1, #1 Background**, second paragraph, bullet 4 reads as follows:

"the strategy to procure a separate PCM team for each design build contract so that PCM expertise can be best matched to the particular scope of that design-build contract. For example, a PCM specializing in tunnel work will be selected for the contracts with major tunneling work, track experience will be matched to track work and core systems for core systems contracts, and so on." **ADD:** "Site Civil work, Structures/Bridge work, Street and Utility relocation work in one package. Also include Materials Source Inspection and Quality Assurance in the PCM package."

**Page 1, 1.1 Performance/Accountability Method**, bottom of page, first bullet point states:

"Implementation of Proven QA/QC Internal processes. **ADD:** Place the Design QC/QA and Construction QC responsibilities on the DB Team and put Construction QA on the PCM

**Page 3, third bar, Project and Construction Management Service**, First bullet point reads:

"Project Technical and Contractual compliance assurance" **ADD** Construction Quality Assurance; Source inspection and Non-Destructive testing; Fabrication Quality Assurance; materials testing and surveying.

**Page 4, Top of page**, second bullet point, states: Technical compliance oversight, **ADD:** Non-Destructive Testing; Facility Audits; Materials Testing; Surveying and Construction Inspection/QA

**Page 5, Top of page. Value Engineering Change Proposals** states: The PCM shall review VECPs for completeness and distribute for review. The PCM shall account for accepted VECPs according to the terms of the Design-Build Contract and Authority procedures. **RECOMMENDATION:** Remove the value engineering review by PCM. It seems redundant since the Design Builder typically takes a design at 30% plus or minus, which is when the Value Engineering Study is best performed.

**Page 5, paragraph 9 Other Contracts** states: The PCM shall provide coordination and oversight of the State Route 99 (SR-99) scope of work to be performed by Caltrans. The limits of the oversight activity will be defined in the Master Agreement between Caltrans and the Authority. **ADD:** This may include, providing construction engineering staff and experts to work hand-in-hand with Caltrans staff and under the direction of Caltrans RE.

**Page 6, paragraph 5 Risk Assessment and Mitigation** states: The PCM shall support the Authority in the risk management process. The PCM shall input into the elements of the Authority's Risk Register regarding the Design-Build Contract. The PCM shall track the progress and effectiveness of Project risk mitigation activities from the Design-Builder and its own activities. **Add:** The PCM will be responsible for qualitative and quantitative cost and schedule risk assessment and management

*of the project including implementation of a risk management information system accessible to the Authority at all times.*

## **OTHER ISSUES PREVIOUSLY BROUGHT TO THE AUTHORITY BOARD**

**Right-of-Way Contracts** - CEO Van Ark made a commitment to the small business community that the Right of Way Contracts would be unbundled so that small businesses could participate. It is rumored that the Authority is going to let these two large contracts out without unbundling. We ask that you keep your commitment to the small businesses.

Thank you for your attention to this presentation and your consideration of the recommended actions.

Diana LaCome  
APAC President & CEO  
[dlacome@aol.com](mailto:dlacome@aol.com)

Ph: 510.557-3810

September 10, 2012

Fax transmittal composed of cover +2 pages of previous letter to C.H.S.R.A.

To: Honorable Governor Jerry Brown State of California

From: Consultant, Daniel W. Dolan, want to be unpaid advisor to the Governor on Twin Tunnel Conveyance through San Joaquin County a redistribution of Sacramento River flow to San Diego and SoCal. I have an elegant engineering solution to explain to the Governor.

Dan Dolan, M.B.A. and President  
Western States Title Services  
Martinez, CA

925-451-6244

Fax 925-932-4863

*Dan Dolan*  
*9-10-2012*



May 28, 2012  
Daniel W. Dolan, M.B.A. and Owner  
Western States Title Services  
Martinez, CA 94553

Honorable Governor Jerry Brown State of California

Chairman, Dan Richard, California High Speed Rail Authority

Directors and Vice-Chairs, California High Speed Rail Authority

Mr. Thomas Fellenz, Counsel and Acting Executive Director, California High Speed Rail Authority

RE: 4 point memorandum encouraging 1<sup>st</sup> 130 mile Construction Phase

Greetings:

This message will be faxed to Governor Brown prior to Tuesday Public Comments address to Dan Richard et al High Speed Rail Authority.

Dear Honorable Governor Brown and Executive Board Members and Counsel;

I have been a successful Executive M.B.A. graduate from C.U. Boulder since 1984 advising Presidents of Transamerica, Pacific Gas & Electric, Stewart Title Guaranty, Petro-Lewis Corp., First American Title Insurance, Mayor Pena City and County of Denver, and Sharam Sasson Founder, Extensity, Inc. Emeryville, CA and High Speed Rail since 2010.

My memorandum and letter dated May 4, 2012 was acted upon by Chairman Dan Richard, pertaining need to a critical need transfer indemnities for Federal/State Environmental "clean up costs" from RDA to Public Agencies such as High Speed Rail during their construction process on 1st 130 miles, and was acted on, by Chairman Richard in his address to the State Legislature.

Additionally, I reminded Staff and Michael Rossi and the Governor on what was done to protect 400 foot right of way corridor in 1869 by C.P.R.R. President and future governor of California State

Leland Stanford...and am suggesting the same vision should be followed during preparation of rights-of-way acquisition and eminent domain actions sought by High Speed Rail and I shall remind them of this at 10a.m. Public Comments portion of the meeting at the beginning of the upcoming Executive Board Meeting of C.H.S.R.A. Sacramento City Council Chambers "L" Street P.D.T. Tuesday, May 29, 2012.

Also, I continue to recommend that the Governor and Chairman Dan Richard with the consent of the Board approve increased title insurance for the 130 miles from current inadequate \$12Million currently contracted for to \$1/million mile per laid track or \$130 Million Owner's Title Insurance Coverage available through Stewart Title Guaranty it's National Title Services Division, same that insured \$4.5 Billion Denver International Airport.

Lastly, as you prudently select a new CEO for High Speed Rail. Please realize you actually need two (2) new hires in my humble opinion.

1st. Select a Top notch International or Transportation Rail Engineer to replace Mr. Van Ark.

2nd. Select a Highly recommended veteran of Wall Street and Investment Banker capable of generating excitement and promoting Sale of State Revenue Bonds in connection to the construction of High Speed Rail to AUGMENT the abilities of Transportation/Civil Engineer capable of managing this mega-project working closely with the Principal Prime Parson's Brinckerhoff and the other Prime Contractors and their sub-contractors. One "superstar" cannot honestly perform the job needed to be performed by two Professional co-managers.

Respectfully,  
Daniel W. Dolan, M.B.A., Owner  
Western States Title Services  
Martinez, CA 94553  
May 28, 2012

[weststtitle@yahoo.com](mailto:weststtitle@yahoo.com)

May 4, 2012  
Western States Title Services  
Martinez, CA 94553

Honorable State of California Governor Jerry Brown  
State Capitol  
Sacramento, CA

Michael E. Rossi, Executive Board Member  
C.H.S.R.A.  
Sacramento, CA

Dan Richard, Chairman  
California High Speed Rail Authority  
Sacramento, CA

Gentlemen:

Congratulations on achieving yet another important Milestone in the construction of this Nation's first High Speed Railroad by certification of EIR/EIS for the 1<sup>st</sup> construction package within Merced-Fresno Segment of planned project initially of 300 miles of track.

Respectfully, we solicit your investigation and in our opinion three (3) important matters which may affect the development and construction of C.H.S.R.A. for your consideration and possible immediate action?

First, Exhibit "A" hereto describes the "original language used by Former Governor and Former President of Central Pacific Railroad Company, Leland Stanford in Deed reservations for 400 foot Congressional Grant privileges for the Railroad during construction of the 1<sup>st</sup> Transcontinental Railroad in 1869. Perhaps you may wish to recommend that Thomas Fellenz, Esq. Counsel for C.H.S.R.A. and his director, Patricia A. Jones Real Property and ROW acquisitions for C.H.S.R.A. recommend themselves this language to California D.O.T. transportation attorneys in the drafting of your future conservation easements, rights-of-way and railroad deeds for High Speed Rail?

Second, Exhibit "B" hereto references Assembly Bill 1235 authored by Roger Hernandez (D-San Gabriel Valley) passed out of the House

Assembly and voted for in Senate Committee 7-0 Chaired by State Senator Joe Simitian (R-Palo Alto) pertaining to Polanco Redevelopment Act in order to clarify that the

successor agency of an RDA maintains the authority, rights, powers, duties, obligations and protections that previously applied to the RDA under the Polanco Act.

This Bill or similarly presented bills in current or future State Legislature *might be amended to include acquisition and eminent domain rights afforded California High Speed Rail Authority during its planned acquisitions with R.F.A. and California D.O.T. such that* all of the protections considered by A.B. 1235 would flow also to C.H.S.R.A. and save Taxpayers and F.R.A./D.O.T. millions of mitigation and clean-up costs in the event hazardous substances were dredged up constructing any of the new H.S. Passenger Stations or installing tunnel, subways, and elevated tracks...Provides immunity from liability for redevelopment agencies and subsequent property purchasers for sites cleaned up under a cleanup plan approved by the Department of Toxic Substances Controller and Regional Water Quality Control Board.

Third, Exhibit "C" attached references a request to immediately negotiate and contract with Stewart Title Guaranty Company by its Senior Underwriter, Commercial Production Manager National Title Services, Mr. Louis Canaras 1-800-729-1900 x8152 pricing of endorsements and Title Insurance for 1<sup>st</sup> mile and entire C.H.S.R.A. Project consisting of 300-800 mile system with Full Coverage subject to Policy terms and provisions at \$1Million/mile of constructed track and rights of way acquisition. See his letter to the Executive Board and Mr. Dan Richard, Chairman dated April 18, 2012. In addition, Mr. Daniel W. Dolan, his agent and Owner, Western States Title Services addressed the Executive Board both days sessions and Vice-Chair Lynn Schenk, Attorney recommended that Staff and the Board seriously investigate Mr. Dolan's belief that current Regional Consultant and its Title Company, sub-contractor at the current time after \$18 Million Advanced Services Contract funded January 2012, are only offering to give Title Insurance and assurances of the face amount of pre-liminary title reports with "face value" totaling less than \$12 million versus \$130 Million offered by Stewart Title or about 1/10<sup>th</sup> of the coverage such that C.H.S.R.A. to the detriment of F.R.A., State of California, its citizens and taxpayers, "woefully" under insured in this matter.

If any of you have any questions, please do not hesitate to contact either me or Mr. Canaras of Stewart Title Guaranty 800-729-1900 x8152.

Cordially,

Daniel W. Dolan, Owner  
Western States Title Services  
433 Blue Ridge Drive,  
Martinez, CA 94553  
[weststtitle@yahoo.com](mailto:weststtitle@yahoo.com)  
925-943-5226  
Fax 925-932-4863